

EXHIBIT "A"

Squire, Sanders & Dempsey

L.L.P.

APR 05 2000

Telephone (602) 528-4000

Telecopier (602) 253-8129

*Counsellors at Law
Two Renaissance Square
40 North Central Avenue, Suite 2100
Phoenix, Arizona 85004*

Direct Dial Number

(602) 528-4024

jkroop@ssd.com

April 5, 2000

VIA COURIER

Carolyn J. Johnsen Esq.
Hebert, Schenk & Johnsen P.C.
1440 E. Missouri
Suite 125
Phoenix, AZ 85014

*Compiling
Bill of Sale
4-5-00
5:33*

Re: Leeward Hotels, L.P.

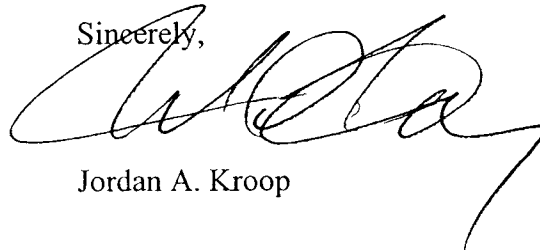
Dear Carolyn:

Enclosed is a Subpoena Duces Tecum and a Notice of Deposition. We are requesting that the documents requested on Exhibit A to the Subpoena be produced no later than April 10, 2000 at 4:00 p.m. and that Jack make himself available for deposition on April 12, 2000 at 1:00 p.m. (or whenever your deposition of Laurel is complete). The purpose of this discovery is to ascertain the nature and extent of your firm's representations of Kilburg-related entities before the filing of the bankruptcy, as pertaining to your firm's first interim fee application. *imma - 2/2/00*

In a manner similar to how you handled service of Laurel's subpoena, please accept service of the enclosed Subpoena and execute the acceptance of service form enclosed.

Please let me know if the scheduling of the requested discovery works or if other dates or times is more convenient for you and Jack.

Sincerely,



Jordan A. Kroop

Enclosures

*Bratislava • Brussels • Budapest • Cleveland • Columbus • Hong Kong • Houston • Jacksonville
Kyiv • London • Madrid • Miami • Moscow • New York • Prague • Taipei • Washington*

1 Thomas J. Salerno, Esq. (#007492)
Jordan A. Kroop, Esq. (#018825)
2 Squire, Sanders & Dempsey L.L.P.
40 North Central Avenue, Suite 2700
3 Phoenix, Arizona 85004-4441
Tel: (602) 528-4000
4 Fax: (602) 253-8129
E-Mail: tsalerno@ssd.com
5 jkroop@ssd.com

6 Attorneys for LaSalle National Bank as Trustee

7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF ARIZONA**

9 In re:

10 LEEWARD HOTELS, L.P., an Arizona
11 limited partnership,

12 Debtor.

In Proceedings under Chapter 11

Case No. B-99-09162-ECF-GBN

SUBPOENA DUCES TECUM

13 TO: John J. Hebert
14 Hebert, Schenk & Johnsen, P.C.
15 1440 East Missouri Avenue, Suite 125
Phoenix, AZ 85014

16 **YOU ARE COMMANDED** to appear for the taking of your deposition upon oral examination
17 at the following date, time, and place:

18 **DATE AND TIME:** April 12, 2000 at 1:00 p.m.

19 **PLACE:** Squire, Sanders & Dempsey L.L.P.
20 40 North Central Avenue
Suite 2700
21 Phoenix, Arizona 85004

22 **PERSON TO BE EXAMINED:** John J. Hebert

23 **YOU ARE ALSO COMMANDED** to produce and permit inspection and copying of all
24 documents listed on the attached Exhibit A at the same place on the following date and time:

25 **DATE AND TIME:** April 10, 2000 at 4:00 p.m.

26 - - You have been subpoenaed by counsel for LaSalle National Bank, in its capacity as Trustee for
27 the registered holders of the DLJ Mortgage Acceptance Corporation, Commercial Mortgage Passthrough
28 Certificates, Series 1997-CF1, as serviced by Lennar Partners, Inc. The name, address, and telephone
number of such counsel is set forth at the beginning of this Subpoena Duces Tecum.

1 You may be deemed to be in contempt of court if you fail to obey this Subpoena Duces Tecum
2 without adequate excuse.

3 In accordance with Rule 45(a)(1)(D) of the Federal Rules of Civil Procedure, made applicable to
4 this contested matter under Rule 9016 of the Federal Rules of Bankruptcy Procedure, the full texts of
5 subsections (c) and (d) of Fed. R. Civ. P. 45 are as follows:

6 (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

7 (1) A party or an attorney responsible for the issuance and service of a
8 subpoena shall take reasonable steps to avoid imposing undue burden or expense on
9 a person subject to that subpoena. The court on behalf of which the subpoena was
10 issued shall enforce this duty and impose upon the party or attorney in breach of this
11 duty an appropriate sanction, which may include, but is not limited to, lost earnings
12 and a reasonable attorney's fee.

13 (2) (A) A person commanded to produce and permit inspection and
14 copying of designated books, papers, documents or tangible things, or inspection of
15 premises need not appear in person at the place of production or inspection unless
16 commanded to appear for deposition, hearing on trial.

17 (B) Subject to paragraph (d)(2) of this rule, a person commanded to
18 produce and permit inspection and copying may, within 14 days after service of the
19 subpoena or before the time specified for compliance if such time is less than 14
20 days after service, serve upon the party or attorney designated in the subpoena
21 written objection to inspection or copying of any or all of the designated materials or
22 of the premises. If objection is made, the party serving the subpoena shall not be
23 entitled to inspect and copy the material or inspect the premises except pursuant to
24 an order of the court which the subpoena was issued. If objection has been made,
25 the party serving the subpoena may, upon notice to the person commanded to
26 produce, move at any time for an order to compel the production. Such an order to
27 compel production shall protect any person who is not a party or an officer of a party
28 from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall
quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party
to travel to a place more than 100 miles from the place where that person resides, is
employed or regularly transacts business in person, except that, subject to the

provisions of clause (c)(3)(B)(iii) of this rule, such a persons may in order to attend
trial be commanded to travel from any such place within the state in which the trial
is held, or

(iii) requires disclosure of privileged or other protected matter
and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential
research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or
information not describing specific events or occurrences in dispute and resulting
from the expert's study made not at the request of any party, or

(iii) requires a person who is not a part or an officer of a party
to incur substantial expense to travel more than 100 miles to attend trial, the court
may, to protect a person subject to or affected by the subpoena, quash or modify the
subpoena or, if the party in whose behalf the subpoena is issued shows a substantial
need for the testimony or material that cannot be otherwise met without undue
hardship and assures that the person to whom the subpoena is addressed will be
reasonably compensated, the court may order appearance or production only upon
specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce
them as they are kept in the usual course of business or shall organize and label them
to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that is
privileged or subject to protection as trial preparation materials, the claim shall be
made expressly and shall be supported by a description of the nature of the
documents, communications, or things not produced that is sufficient to enable the
demanding party to contest the claim.

17 Given under my hand in accordance with Fed. R. Civ. P. 45(a)(3), made applicable to this
18 contested matter by Bankruptcy Rule 9016.

19 DATED this 5th day of April, 2000.

SQUIRE, SANDERS & DEMPSEY, L.L.P.

By: 

Thomas J. Salerno

Jordan A. Kroop

40 North Central Avenue, Suite 2700

Phoenix, AZ 85004

Attorneys for LaSalle National Bank as Trustee

Exhibit A

1
2
3 1. All documents (including without limitation, letters, memoranda, e-mails, notes, correspondence,
4 and all other materials referred to in Fed. R. Civ. P. 34) relating to, referring to, or providing evidence
5 of, the professional and/or legal representation of William Kilburg or any entity owned or controlled, in
6 whole or in part, by William Kilburg by any attorney at Hebert, Schenk & Johnsen, P.C. at any time
7 before August 2, 1999, relating to any matter, including without limitation the ownership, transfer of
8 ownership, management, or operations of the hotels currently owned by Leeward Hotels, L.P.

9 2. All billing records (including without limitation billing statements, time sheets, computer time
10 entries, notes, invoices, and work descriptions) relating to, referring to, or providing evidence of, the
11 professional and/or legal representation by Hebert, Schenk & Johnsen, P.C. of William Kilburg or any
12 entity owned or controlled, in whole or in part, by William Kilburg at any time before August 2, 1999,
13 relating to any matter, including without limitation the ownership, transfer of ownership, management,
14 or operations of the hotels currently owned by Leeward Hotels, L.P.
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1 Thomas J. Salerno, Esq. (#007492)
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40 North Central Avenue, Suite 2700
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E-Mail: tsalerno@ssd.com
5 jkroop@ssd.com

6 Attorneys for LaSalle National Bank as Trustee

7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF ARIZONA**

9 In re:

10 LEEWARD HOTELS, L.P., an Arizona
11 limited partnership,

12 Debtor.

In Proceedings under Chapter 11

Case No. B-99-09162-ECF-GBN

NOTICE OF DEPOSITION

13 **PLEASE TAKE NOTICE** that John J. Hebert is to appear and give testimony before an
14 authorized person to administer oaths, on the date and time specified below, in accordance with Fed. R.
15 Civ. P. 30, made applicable to this contested matter under Rule 9014 of the Federal Rules of Bankruptcy
Procedure.

16 **DATE AND TIME:**

April 13, 2000 at 1:00 p.m.

17 **PLACE:**

18 Squire, Sanders & Dempsey L.L.P.
40 North Central Avenue
Suite 2700
19 Phoenix, Arizona 85004

20 **PERSON TO BE EXAMINED:** John J. Hebert

21 DATED this 5th day of April, 2000.

22 SQUIRE, SANDERS & DEMPSEY, L.L.P.

23 By: 

24 Thomas J. Salerno

25 Jordan A. Kroop

26 40 North Central Avenue, Suite 2700

27 Phoenix, AZ 85004

28 Attorneys for LaSalle National Bank as Trustee

1 Thomas J. Salerno, Esq. (#007492)
Jordan A. Kroop, Esq. (#018825)
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E-Mail: tsalerno@ssd.com
5 jkroop@ssd.com

6 Attorneys for LaSalle National Bank as Trustee

7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF ARIZONA**

9 In re:

10 LEEWARD HOTELS, L.P., an Arizona
11 limited partnership,

12 Debtor.

In Proceedings under Chapter 11

Case No. B-99-09162-ECF-GBN

ACCEPTANCE OF SERVICE

13 Carolyn J. Johnsen, whose address is c/o Hebert, Schenk & Johnsen, P.C., 1440 East Missouri
14 Avenue, Suite 125, Phoenix, Arizona 85014, acknowledges that:

15 1. In accordance with Fed. R. Civ. P. 4, she is authorized to accept service of process of the

16 attached Subpoena Duces Tecum and Notice of Deposition; *however in doing so*
17 *does not waive and expressly reserves the ability to object to the Subpoena*

18 2. She has received one copy of the Subpoena and Notice of Deposition issued by Squire,
19 Sanders & Dempsey, LLP, counsel for LaSalle National Bank, in its capacity as Trustee,
20 for the appearance of John J. Hebert at a deposition in this contested matter.
21

22 DATED this 17 day of April, 2000.

23 HEBERT, SCHENK & JOHNSEN, P.C.

24 By: Carolyn J. Johnsen

25 Carolyn J. Johnsen

26 1440 East Missouri Avenue, Suite 125
27 Phoenix, AZ 85014
28

*in accordance with Rule 45
without regard to time limitations.*

EXHIBIT "B"

Carolyn Johnsen

From: Carolyn Johnsen
Sent: Friday, April 14, 2000 10:31 AM
To: 'Kroop, Jordan A.'
Subject: RE: Leeward - Subpoena response

I am sorry if I struck a nerve. It is just that your last e-mail said we were served and I didn't think we were -- at any rate, as I indicated, I am willing to cooperate and accept service without waiving any objections. I still am having a problem with pre-petition docs -- the reason your firm's billing records were relevant is because you challenged the reasonableness--but I only asked for post-petition records -- Nevertheless, I will try to provide what I can on Monday morning (first thing) even if it is only a skeleton -- at least you will have the time frames and the names on the files, etc. -- CJ

-----Original Message-----

From: Kroop, Jordan A. [mailto:JKroop@ssd.com]
Sent: Thursday, April 13, 2000 7:14 PM
To: Carolyn Johnsen
Cc: Jack Hebert
Subject: RE: Leeward - Subpoena response

The subpoena I am referring to is the same subpoena as was sent with the letter you just referred to. It is the same subpoena that required Jack's presence for a deposition. You have this subpoena. Your firm's billing records from the pre-petition period are directly relevant to the issue of your firm's undisclosed conflict in the same manner as you asserted my firm's billing records were relevant. As to privilege, I suggest that not every word of your billing records is subject to privilege. We produced ours with appropriate redaction and reservation of privilege, I suggest you consider doing the same.

Jordan A. Kroop
Squire, Sanders & Dempsey, LLP
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004
Tel: (602) 528-4024
Fax: (602) 253-8129
jkroop@ssd.com <mailto:jkroop@ssd.com>

-----Original Message-----

From: Carolyn Johnsen [mailto:CJJ@hsjlaw.com]
Sent: Thursday, April 13, 2000 5:13 PM
To: 'Kroop, Jordan A.'
Cc: Jack Hebert
Subject: RE: Leeward - Subpoena response

We were never served with a subpoena to my knowledge -- Are you referring to the letter requesting I accept service?-- I don't mind doing that so long as I don't waive any objections -- I can tell you that there are no documents regarding representation that would not be attorney/client privileged -- I am having a difficult time understanding your ability to obtain

pre-petition
billing records?

-----Original Message-----

From: Kroop, Jordan A. [mailto:JKroop@ssd.com]
Sent: Thursday, April 13, 2000 4:55 PM
To: Carolyn Johnsen; Jack Hebert
Subject: Leeward - Subpoena response
Importance: High

Jack and Carolyn --

The subpoena that we served on your firm last week required you to produce certain documents including billing records up to the petition date of August 2, 1999. The subpoena required such production by Monday, April 10 at 4:00 at my offices. It is now Thursday, and I have not received these documents. While we agreed to push Jack's deposition to Tuesday, I still deserve the opportunity to review those documents before that deposition and did not agree to a delay in your firm's compliance with that part of the subpoena. I will expect subpoenaed documents to be produced to me immediately, not later than tomorrow. I trust that you will wish to reciprocate the courtesy and punctuality with which this firm complied with your very similar subpoena last week. Thank you.

Jordan A. Kroop
Squire, Sanders & Dempsey, LLP
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004
Tel: (602) 528-4024
Fax: (602) 253-8129
<mailto:jkroop@ssd.com> jkroop@ssd.com

EXHIBIT "C"

1 **HEBERT, SCHENK & JOHNSEN, P.C.**
2 **1440 E. Missouri Avenue**
3 **Missouri Commons Suite 125**
4 **Phoenix, Arizona 85014-2459**
5 **Telephone: (602) 248-8203**
6 **Facsimile: (602) 248-8840**
7 **E-Mail Address: cjj@hsjlaw.com**

8 **Carolyn J. Johnsen - 011894**
9 **Attorneys for Debtor**

**ELECTRONICALLY
FILED**

10
11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 In re:

14 **LEEWARD HOTELS, L.P., an Arizona**
15 **limited partnership,**

16 **Debtor.**

Chapter 11 Proceedings

Case No. 99-09162-ECF-GBN

AFFIDAVIT OF JOHN J. HEBERT

17 I, John J. Hebert, being first duly sworn depose and say:

18 1. I make this affidavit based on my own personal knowledge.

19 2. I am a shareholder in Hebert, Schenk & Johnsen, P.C. ("HSJ") which was approved by this
20 Court on August 4, 1999 as counsel for debtor-in-possession Leeward Hotels, L.P.

21 3. In approximately January, 1999, William ("Bill") Kilburg approached me about legal
22 representation with respect to a work- out with a lender on various hotels he was considering acquiring. I had
23 known Bill since 1989 when he served as chief financial consultant to an individual for which HSJ filed a chapter
24 11 proceeding.

25 4. At the time Bill contacted me, he was an executive officer with an entity known as Samoth.
26 I filled out a billing form with the Samoth name on it. The file was subsequently opened in the name "Kilburg
27 Hotel Corp." when Bill indicated we would be representing a limited liability company through which he had
28 acquired the hotels.

1 5. HSJ did not represent or advise Bill in the formation of the limited liability company nor
2 in the acquisition of the hotels. At some point, I became aware that Bill had also formed a management company
3 and an employment company, but HSJ did not represent or advise Bill in the formation of those entities.

4 6. HSJ was not approached to represent Bill individually with respect to the hotels and I
5 believed that after reviewing the documents with respect to the hotels acquired, Bill did not have any individual
6 liability.

7 7. In addition, at no time did Bill approach HSJ about representing his management or
8 employment companies.

9 8. In February, 1999, I accompanied Bill in a meeting with representatives of Lennar Partners,
10 the servicer for the lender holding the first lien on the hotels at issue. The meeting was held in Miami, Florida
11 at the offices of Kozyak, Tropin & Throckmorton counsel for Lennar. Lennar's counsel Laurel Isicoff, Lennar
12 principals Steve Bruha and Steve Buckley, Bill and I were present. The purpose of the meeting was to negotiate
13 a work-out of the hotel loans, all of which were in default. A foreclosure was pending on certain of the hotels
14 and it was necessary, if nothing else, to try to gain a forbearance to stop the foreclosure.

15 9. At the conclusion of the meeting, which was late afternoon, the parties were in such a hurry
16 to put something in writing that Ms. Isicoff hand-wrote a forbearance agreement which Buckley signed on behalf
17 of Lennar and Bill signed on behalf of Kilburg Hotels, L.L.C. Ms. Isicoff also included a line for Bill's signature
18 individually. When questioned, Ms. Isicoff indicated she did not believe Mr. Kilburg had individual liability
19 but since Mr. Kilburg had been involved in previous settlement discussions with DLJ, which had formed the
20 securitized pool for the loans in question, she believed it was necessary to obtain from him a release of claims.
21 Bill asked me whether he should sign. It seemed expedient at the time and under the rushed circumstances to
22 simply advise Bill on the signature rather than insist he obtain another lawyer or that he would have to retain HSJ
23 on his individual behalf.

24 10. From February, 1999 through the filing of the bankruptcy in August 1999, I participated
25 in negotiations with Lennar. However, virtually all of the negotiations were between Bill and the principals of
26 Lennar or DLJ. In fact, many times I would contact Ms. Isicoff to inquire as to whether she knew the status of
27 the deal. Her reply was always that she was "out of the loop" and that the principals were working on the
28

1 business points. My time records for the entire six months reflect only about 12 hours spent in actual
2 negotiations. That included 5 hours spent in connection with the Miami meeting.

3 11. At no time during the negotiations did anyone from Lennar raise a question about HSJ's
4 representation nor was it suggested that Bill's management company or employment company be included in any
5 of the documents. There was no question in my mind that Lennar knew Bill was managing the hotels through
6 a separate company. The separateness of the various entities was never an issue as we were simply trying to work
7 a global settlement.

8 12. One of the major "sticking points" in the deal was Bill's refusal to sign a personal
9 guarantee. I conveyed this message in my letters to Ms. Isicoff but at no time believed I was somehow
10 representing Bill or advising him individually. In fact Bill consistently conveyed this point to the principals of
11 Lennar.

12 13. Another point of contention was the management contract Bill was attempting to negotiate
13 for his management company. Again, I acted as a messenger on this issue, but at no time believed I was
14 representing Kilburg Management, L.L.C. or advising it. Bill dealt with Lennar principals almost exclusively
15 on this issue and the lawyers were rarely involved.

16 14. In addition to the "Kilburg Hotels Corp." (99034.01) billing file, I opened three additional
17 files for Kilburg-related matters. The 99034.02 file, opened in about March 1999, is entitled "Asset Planning."
18 It was opened on behalf of Bill individually. I instructed a paralegal to send him some forms and I met with him
19 for about a half hour in October 1999, but he never engaged HSJ to perform any work. The 99034.03 file was
20 opened in about April 1999 and is entitled "San Diego Hotel." HSJ was engaged to perform work for Kilburg
21 Hotels, L.L.C. with respect to a possible hotel acquisition in San Diego, California, a transaction entirely
22 unrelated to any of the hotels in this bankruptcy. The 99034.04 file was opened in about May 1999. HSJ was
23 engaged to perform work for Kilburg Hotels, L.L.C. with respect to an Albuquerque Hotel which eventually
24 became part of the portfolio owned by the Debtor.

25 15. After Leeward Hotels, L.P. was formed, work for Leeward and Kilburg Hotels, L.L.C. with
26 respect to the hotels transferred to Leeward was billed on the 99034.01 file. Except as may have been an
27 inadvertent error, no time for Kilburg Hotels, L.L.C. with respect to other unrelated matters has ever been billed
28

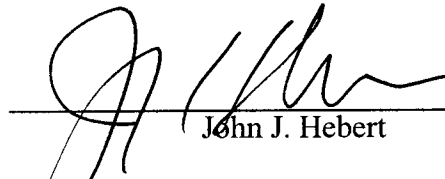
1 to this file. Once the bankruptcy was filed, HSJ ceased representing Kilburg Hotels, L.L.C. with respect to any
2 matters relating to the bankruptcy.

3 16. At no time did HSJ open a file for Kilburg Management, L.L.C. or Kilburg Employment,
4 L.L.C.

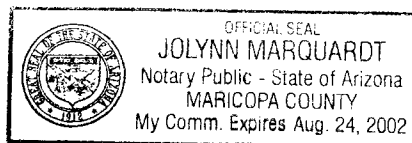
5 17. At no time has HSJ ever received payment from Kilburg individually, Kilburg
6 Management, L.L.C. or Kilburg Employment, L.L.C.

7 18. At no time has HSJ ever represented Kilburg Management, L.L.C. or Kilburg Employment,
8 L.L.C.


9
10 FURTHER AFFIANT SAYETH NAUGHT.

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12
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14 
John J. Hebert

15 SUBSCRIBED AND SWORN to before me this 19 day of April, 2000 by John J. Hebert
16



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Notary Public

My Commission Expires

F:\Data\KILBURG.B\9903401\aff-JJH.wpd

Other: 99-09162-GBN LEEWARD HOTELS, L.P.

**U.S. Bankruptcy Court
District of Arizona
Notice of Electronic Filing**

The following transaction was received from JOHNSEN, CAROLYN J. on 4/19/2000 at 1:45 PM

Case Name: LEEWARD HOTELS, L.P.

Case Number: 99-09162-GBN

Document Number: 245

Docket Text:

Affidavit *Of John J. Hebert* filed by CAROLYN J. JOHNSEN of HEBERT, SCHENK & JOHNSEN, P.C. on behalf of LEEWARD HOTELS, L.P.. (JOHNSEN, CAROLYN)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:F:/Data/KILBURG.B/AFF-JJH.pdf

Electronic document Stamp:

[STAMP AZBStamp_ID=875559564 [Date=4/19/2000] [FileNumber=54493-0] [98a4a8f037cd5217137219ff576e007c5552679dacdbe85cd39de0a6cc21807a9eb2473f911dde6ecd02597d9b9c576667325a55878308c9c281b90175f5a41]]

ELECTRONICALLY
FILED

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5 Telephone: (602) 248-8203
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8 Carolyn J. Johnson - 011894
9 Attorneys for Debtor

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

LEEWARD HOTELS, L.P., an Arizona
limited partnership,

Debtor.

Chapter 11 Proceedings

Case No. 99-09162-ECF-GBN

AFFIDAVIT OF WILLIAM KILBURG

STATE OF ARIZONA

County of Maricopa

} ss.

I, William Kilburg, being first duly sworn, depose and say:

1. I make this affidavit based on my own personal knowledge.

2. I am the managing member of Kilburg Hotels, L.L.C. which is the general partner of the Debtor in this case.

3. In approximately mid-January 1999, I approached John J. Hebert ("Hebert") about his firm Hebert, Schenk & Johnson ("HSJ") representing Kilburg Hotels with respect to a work-out with a lender on various hotels I was considering acquiring. I had worked with Hebert's firm when I was Chief Financial Officer for an individual for which HSJ filed a chapter 11 proceeding.

4. At the time I contacted Hebert, I was an executive officer with an entity known as Samoth.

5. I decided to go forward with acquiring the hotels, and in late January formed a limited liability company, Kilburg Hotels, L.L.C. to acquire them. At the same time, I also formed a management company, Kilburg Management, L.L.C. and an employment company, Kilburg Employment, L.L.C. HSJ did not represent me in the formation of any of these entities or in the acquisition of the hotels.

1 6. After Kilburg Hotels, L.L.C. acquired the hotels, I began negotiations with Steve Buckley
2 and Steve Bruha, representatives of Lennar Partners which was the servicer for the hotels loans, all of which were
3 in default. Because of a pending foreclosure on the Texas hotels, it was crucial for me to get a forbearance or
4 a full settlement.

5 7. I never believed I needed a personal lawyer to represent me in the negotiations because
6 I was not a party to any documents personally. All of my interest in the hotels was held through Kilburg Hotels
7 and its interest in the individual partnerships holding each property.

8 8. In February, 1999 I asked Hebert to accompany me to Miami to attend a work-out meeting
9 with Lennar. At the end of the meeting, we agreed to a forbearance agreement which was hand-written by
10 Lennar's counsel. A line for my signature individually was included. I refused to sign personally as I had no
11 personal interest in the transaction other than that of Kilburg Hotels. I was surprised since I did not believe I had
12 any personal interest in the forbearance. Lennar's attorney assured me that it was a non-issue and was not
13 intended to involve me personally in the forbearance but just to make sure that Lennar was protected. I turned
14 to Hebert and asked if he thought it was okay to sign so we could get the deal done. I never thought Hebert was
15 representing me personally in the negotiations as everything was done through Kilburg Hotels, L.L.C.

16 9. I handled most of the negotiations myself with Buckley, Bruha or Raboy of DLJ which
17 was the originator of the loan. Lennar requested I sign a personal guarantee and modify Kilburg Management's
18 management contract. I needed no legal counsel on these issues as I had no intention of guaranteeing the debt
19 in any way and I was evaluating the economic modifications to the management contract on my own. I really
20 never thought Hebert was representing the management company. In fact, almost all the discussions about the
21 management contract were between Buckley, the principal contact at Lennar, and me.

22 10. At no time during the negotiations did anyone from Lennar raise a question about Hebert's
23 representation nor was it suggested that my management company or employment company be included in any
24 of the ongoing forbearance documents.
25
26
27
28

11. At one time, I approached Hebert's firm about some possible asset planning. I received some form documents and met with Hebert once briefly but decided not to pursue the matter for now.

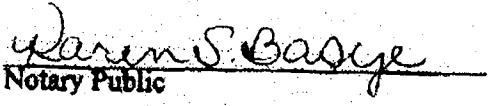
FURTHER AFFIANT SAYETH NAUGHT.

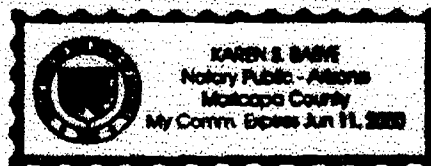

William Kilburg

SUBSCRIBED AND SWORN TO before me this 19th day of April, 2000, by William Kilburg.

My Commission Expires:

June 11, 2000


Notary Public



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Other: 99-09162-GBN LEEWARD HOTELS, L.P.

**U.S. Bankruptcy Court
District of Arizona
Notice of Electronic Filing**

The following transaction was received from JOHNSEN, CAROLYN J. on 4/19/2000 at 1:38 PM

Case Name: LEEWARD HOTELS, L.P.

Case Number: 99-09162-GBN

Document Number: 243

Docket Text:

Affidavit *Of William Kilburg* filed by CAROLYN J. JOHNSEN of HEBERT, SCHENK & JOHNSEN, P.C. on behalf of LEEWARD HOTELS, L.P.. (JOHNSEN, CAROLYN)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:F:/Data/KILBURG.B/AFF-BK.pdf

Electronic document Stamp:

[STAMP AZBStamp_ID=875559564 [Date=4/19/2000] [FileNumber=54487-0] [17
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**ELECTRONICALLY
FILED**

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4 **Phoenix, Arizona 85014-2459**
5 **Telephone: (602) 248-8203**
6 **Facsimile: (602) 248-8840**
7 **E-Mail Address: cjj@hsjlaw.com**

8 **Carolyn J. Johnsen - 011894**
9 **Attorneys for Debtor**

10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:

13 **LEEWARD HOTELS, L.P., an Arizona**
14 **limited partnership,**

15 **Debtor.**

Chapter 11 Proceedings

Case No. 99-09162-ECF-GBN

AFFIDAVIT OF CAROLYN J. JOHNSEN

16 I, Carolyn J. Johnsen, being first duly sworn depose and say:

- 17
- 18 1. I make this affidavit based on my personal knowledge.
- 19 2. I am a shareholder in Hebert, Schenk & Johnsen, P.C. ("HSJ") which was approved by this
- 20 Court on August 4, 1999 as counsel for debtor-in-possession Leeward Hotels, L.P.
- 21 3. I have been the principal attorney for the Debtor since the filing of the bankruptcy in
- 22 August 1999 and the main supervising attorney for the paralegals.
- 23 4. In paragraph 14(a), (b) and (f) of its Objection, Lennar accuses HSJ of performing tasks
- 24 to benefit non-debtor partnerships and corporations. I instructed the paralegals to perform these tasks all on
- 25 behalf of the Debtor. The work included compiling the documents pertaining to each hotel. These included 12
- 26 sets of documents for the entities which owned the hotels prior to the Debtor, 12 sets of conveyance documents,
- 27 and 12 sets of loan documents. Each of the 10 Lennar Hotels was owned by a partnership with a corporate
- 28 general partner and thus, the paralegals had to work on 10 sets of partnership and corporate documents.

5. Upon my instruction, one of the paralegals prepared a graphic organizational chart to assist the Court and creditors. The chart was filed in the Debtor's initial status report in the first month of the case. Because I anticipated the need to provide documents to opposing counsel in the early stages of the case, I instructed the paralegals to compile the partnership and corporate documents so they could be produced quickly in an orderly fashion to opposing counsel including Lennar. The time referred to in paragraph 14(a), (b) and (f) included this work.

6. None of the work performed on the Leeward file was for non-debtors.

FURTHER AFFIANT SAYETH NAUGHT.


Carolyn J. Johnsen

SUBSCRIBED AND SWORN to before me this 19 day of April, 2000 by Carolyn J. Johnsen.



John Marguardt
Notary Public

My Commission Expires

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Other: 99-09162-GBN LEEWARD HOTELS, L.P.

**U.S. Bankruptcy Court
District of Arizona
Notice of Electronic Filing**

The following transaction was received from JOHNSEN, CAROLYN J. on 4/19/2000 at 1:41 PM

Case Name: LEEWARD HOTELS, L.P.

Case Number: 99-09162-GBN

Document Number: 244

Docket Text:

Affidavit *Of Carolyn J. Johnsen* filed by CAROLYN J. JOHNSEN of HEBERT, SCHENK & JOHNSEN, P.C. on behalf of LEEWARD HOTELS, L.P.. (JOHNSEN, CAROLYN)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:F:/Data/KILBURG.B/AFF-CJJ2.pdf

Electronic document Stamp:

[STAMP AZBStamp_ID=875559564 [Date=4/19/2000] [FileNumber=54490-0] [36
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EXHIBIT "D"

Leeward
Hotels,
L.P.



Arizona Entities:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Delaware Entities:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>